

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Policy, Research, and Technical Assistance Committee
October 7, 1997

Agenda Item 1

ITEM: DISCUSSION OF LEGISLATIVE AND EXTERNAL AFFAIRS OFFICE
REORGANIZATION AND RULEMAKING ACTIVITIES

I. SUMMARY

The Board's Legislative and Regulatory Affairs Office has been reorganized as a consequence of a staff reduction resulting from the 1997-98 Budget, and realignment with the goals and objectives of the 1997 CIWMB Strategic Plan. Most evident in the Office changes are the elimination of the Regulations Section and the creation of a new External Affairs Section. In line with these changes, the Office is renamed the Legislative and External Affairs Office. While the Office no longer provides direct assistance to program divisions in their rulemaking efforts, it will continue to play an important role in maintaining consistency in the Board's rulemaking efforts. This is essential given the dynamics of current rulemaking procedures related to Cal/EPA's policy on major regulations and Governor's Executive Order W-144-97. In addition to efforts addressing regulatory consistency, the External Affairs Office will focus on public outreach related to the Board's rulemaking and regulatory programs, and providing Ombudsman services for the Board.

Staff will provide an overview of the reorganization at the Committee meeting.

II. PREVIOUS COMMITTEE ACTION

There has been no previous Committee action on this item.

III. OPTIONS FOR THE COMMITTEE

This is an informational item only.

IV. RECOMMENDATION

Staff recommends that the Committee discuss the item and request any necessary clarification prior to the Board meeting.

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V. BACKGROUND

As a result of reductions in the Board's 1997-98 budget, 5.5 PY were eliminated in the Legislative and Regulatory Affairs Office, effectively eliminating the centralized regulations program. This included 3.5 PY of professional staff and 1.0 PY of support staff at the Board, and an additional 1.0 PY of limited-term staff loaned to Cal/EPA for the permit assistance centers.

For the past two years, the Legislative and Regulatory Affairs Office has provided, through its Regulatory Affairs Section, a variety of administrative and technical support services to the Board's rulemaking projects. With the elimination of the section in the 1997-98 Budget, many of these functions are being absorbed within the program divisions. This transition to division-based rulemaking is essentially complete, yet there remains a core of centralized regulations-related activities which must be carried out to achieve consistency in the Board's rulemaking and conformity with new procedures developed by Cal/EPA and in response to Executive Order W-144-97. Even though these new procedures are not fully developed, it is already clear that the changes -- both internal and external -- will increase the commitment of division staff time to rulemaking activities.

The Legislative and Regulatory Affairs Office has been reorganized to help coordinate implementation of the new rulemaking procedures and to promote regulatory consistency, and at the same time enhance the role of the Board Ombudsman program, creating a more external focus through public outreach. It is now the Legislative and External Affairs Office (LEAO). In order to accomplish the external affairs functions described in detail below, two PY were transferred: one from the Waste Prevention and Market Development Division, the other from the legislative program. The basic functions of the Board's legislative program will continue; however, the level of activity will be reduced in some areas, such as the office's ongoing legislative relations efforts (support to legislative members and staff, outreach to legislators). Also, some occasional limited-term needs for additional staffing to handle peak legislative periods must be addressed, as discussed later in this agenda item.

The reorganization plan was developed in a team effort with care and thought to ensure that the proposed LEAO was consistent with many of the Board's present initiatives. Our approach is

consistent with the goals of the Board's Strategic Plan, specifically those goals that ensure compliance with waste management statutes and laws and meet the needs of constituents and staff. Also factored in are the Board's integrated training initiative and vision of providing technical assistance and information to constituents and staff through the Internet medium.

External Affairs Program

The proposed role and responsibilities of the LEAO external affairs program and staff are described on the following pages in three broad areas: regulatory consistency, external affairs, and Board Ombudsman activities.

Regulatory Consistency

- Develop Board rulemaking policy and procedures in consultation with Legal Office and division regulations coordinators, with emphasis on new procedures required by Cal/EPA policy on major regulations, Executive Order W-144-97, and the scientific peer review required by Stats. 1997, c. 295 (SB 1320, Sher)
- Promote rulemaking consistency among program divisions through regulations coordinating workgroup

Major Regulations

For proposed regulations with projected annual economic impacts of \$10 million or more, Cal/EPA policy requires:

- ✓ Cost analysis of alternatives
- ✓ Risk assessment
- ✓ Benefit analysis

- Create and maintain a Board *Rulemaking Guidebook* to provide an overview of the rulemaking process, and to document internal regulations development procedures
- Develop and maintain updated electronic templates for rulemaking forms and models for rulemaking documents (Notice, ISOR, summary and response to comments, etc.)
- Establish and maintain an electronic filing system for Board rulemaking documents on

Executive Order W-144-97

- ✓ Monitor development of new rulemaking procedures (annual calendar, sunset review, economic and fiscal impact statement)
- ✓ Facilitate new procedures implementation via interdivisional regulations coordinating workgroup
- ✓ Conduct public participation process for sunset review of regulations

the U: drive, with intent to provide electronic public access via the Internet

- In concert with the Legal Office, develop and conduct an annual rulemaking class for Board staff and external constituents; provide support to division regulations coordinators for ongoing training needs
- Conduct annual review of Board regulations for consistency, clarity and necessity
- Coordinate preparation and submittal of the annual Regulatory Overview and Rulemaking Calendar (program divisions' two-year rulemaking plans are attached to this item)

NOTE: Under the terms of the Executive Order, no rulemaking can proceed without first being published in the annual Rulemaking Calendar... "unless otherwise required by state or federal law or as required by a Declaration of a State of Emergency, Executive Order, or by the need to protect immediate public health, safety and welfare."

External Affairs

- Increase public understanding of Board rulemaking and regulatory processes through development of plain English public information materials
- Improve public access to Board rulemaking project information through improved outreach, emphasizing use of the Board's Internet site
- Facilitate identification of and participation by potentially affected parties in Board rulemaking activities, assisting divisions with rulemaking-based public participation activities
- Compile and disseminate monthly regulations update, with primary emphasis on opportunities for electronic distribution
- Monitor federal and other California State agency rulemaking activities; facilitate coordinated Board comment

Internet-based Outreach

- ✓ Maintain up-to-date electronic regulations for public use on the Internet
- ✓ Distribute monthly electronic regulations update
- ✓ Solicit and respond to public suggestions for regulatory reform (Executive Order sunset review and beyond) *future*
- ✓ Develop and maintain computer-based public access to Board rulemaking files *future*

Board Ombudsman

- Facilitate public access to integrated waste management permit, enforcement, and regulatory processes
- In cooperation with Deputy Directors, provide third-party complaint resolution services related to all Board regulatory activities
- In coordination with the divisions, ensure compliance of Board-based permitting and certification programs with the Permit Applicant's Bill of Rights issued by Cal/EPA; work cooperatively with the Permitting and Enforcement Division Deputy Director to secure local enforcement agency (LEA) compliance
- Serve as public advisor in appeals to Board of local hearing panel decisions, working closely with the Legal Office and Permitting and Enforcement Division Deputy Director
- Develop guidance on public involvement in all integrated waste management permit and enforcement processes, in conjunction with regulations coordinating workgroup
- Solicit public suggestions for regulatory reform as required by Executive Order W-144-97, and coordinate with divisions to address reform concepts; organize and conduct statewide workshops to seek public input on scheduled sunset reviews of regulations required under the Executive Order (a three-year schedule of sunset reviews was submitted to OAL earlier this year and is attached to this item)

Legislative Affairs Program

The legislative affairs program serves to:

- Provide information and analysis to executive staff, Board members, and the Administration on State and Federal legislation affecting solid waste management issues;
- Assist the Board in developing proposals for legislation to be sponsored by the Board;
- Communicate Board positions on legislation to the Legislature, Congress, the Administration, and interested parties; and
- Coordinate technical information provided to the Legislature on solid waste management issues.

VI. ANALYSIS

Elimination of the regulatory affairs program has an impact on the Board's program Divisions. Several functions have been transferred to the Divisions, others will be maintained in a streamlined fashion within the external affairs program, and some new ones will be created. Changes resulting from this shift in responsibilities are discussed below.

Technical assistance to program staff

Much of the Regulatory Affairs Section resources were devoted to providing hands-on assistance to program staff involved in the development of regulations. This included:

- ✓ training program staff who were embarking on new rulemaking projects;
- ✓ drafting, reviewing and editing rulemaking documents [Notice Publication/Regulations Submission (Form 400), Notices of Proposed Rulemaking, Initial/Final Statements of Reason, plain English statements, Fiscal Impact Statements (Form 399) and Agency memoranda, final rulemaking file]; and
- ✓ meeting CEQA requirements [completion of the Environmental Checklist (Initial Study), Negative Declaration, Notice publication, Notices of Completion and Determination).

Impact: Transfer from Office to Divisions workload and responsibility for all rulemaking activities (2.0 PY across the Board). In addition, each Division has identified a regulations coordinator as a representative to a new boardwide Regulatory Consistency Workgroup.

Economic and fiscal impact analysis

Typically, the Board has conducted fairly elementary, qualitative economic impact analyses of proposed regulations. Recent changes in rulemaking procedure related to the adoption of Cal/EPA's policy on major regulations and to the issuance of Governor's Executive Order W-144-97 are necessitating increased attention to fiscal and economic impact analysis. The Cal/EPA policy on economic impact analysis of proposed regulations will not affect the Board unless major regulations (having an estimated cost of at least \$10 million in any one year) are proposed. Some of the regulations proposed by the Board, such as those under development for material recovery facilities/transfer stations and construction/demolition facilities could qualify as major regulations. Nonetheless,

more detailed economic analyses are being prepared with assistance from Cal/EPA's Economics Unit, which is funded by the Agency's boards/office/ departments and housed in the Air Resources Board's Research Division. Allocation of Board staff resources to these analyses will be in direct proportion to the complexity of proposed regulations and the breadth of potentially impacted parties.

In response to Governor's Executive Order W-144-97, the Trade and Commerce Agency has developed a standardized economic impact statement. The new Economic and Fiscal Impact Statement (STD. 399), now set forth in the State Administrative Manual (SAM), must be completed and approved by the Cabinet Secretary prior to formal notice of proposed regulations. This means that substantial additional staff work will likely be required during the informal process to assess the costs of proposed regulations on individuals, businesses, and local agencies.

Impact: Transfer from Office to Divisions workload and responsibility for all economic and fiscal impact analysis related to proposed regulations (1.0 PY plus additional staffing to fulfill new SAM requirements). Additional costs related to Cal/EPA policy on major regulations is undetermined but would include, at a minimum, necessary contract monies to fund risk assessment.

Peer Review

Chapter 295, Statutes of 1997, (SB 1320, Sher) establishes scientific peer review requirements for regulations proposed within the Cal/EPA family of agencies, beginning January 1, 1998. This Chapter will require Cal/EPA or Cal/EPA boards, offices, and departments to enter into agreements with external scientific entities for review of the scientific basis for proposed regulations that are designed to protect public health or the environment. In its final analysis of SB 1320, the Board estimated that as many as ten proposed regulations each year would require evaluation by scientific peer review entities.

Impact: This is a new activity. The external affairs program, in consultation with the Regulatory Consistency Workgroup, will take a lead role in developing Board policy on peer review. Program Divisions will bear the implementation costs. The Board does not anticipate frequent controversy over the scientific knowledge, methods, or practices used in development of its

regulations. Still, the Board estimates additional annual costs of up to \$300,000 to comply with the scientific peer review requirements. Most of these costs would be borne by the Integrated Waste Management Account.

Internet development

Development of Internet-based access to the Board's proposed regulations was a priority of the regulatory affairs program prior to its elimination. Potentially affected parties are now able to participate in the Board's rulemaking projects via the Internet. Draft regulations, notices of proposed regulations, and other rulemaking documents are available on-line; parties can provide their comments on regulations electronically.

Impact: The external affairs program will continue this activity. Program Divisions are responsible for providing rulemaking documents to be placed on the Board's Internet homepage, and for providing updated project status reports to the external affairs staff.

Regulatory consistency

With the advent of new rulemaking procedures related to economic impact analysis and scientific peer review, there is a need for policy review and development to maintain consistency in the Board's rulemaking activities. This is especially true with the loss of the regulatory affairs program and decentralization of its responsibilities to the program Divisions. Several consistency-based activities are outlined in prior pages of this agenda item.

Impact: The external affairs program will continue this activity, initiated by the regulatory affairs program. Program Divisions will contribute to this effort through their designated regulations coordinators and their participation in the Regulatory Consistency Workgroup.

Rulemaking project tracking

In the past, Regulatory Affairs Section staff routinely communicated with program staff involved in rulemaking projects to track their status. To publish the monthly *Regulations Update* on the Internet, the LEAO now will rely on the divisions to provide updated status reports on a recurring basis.

Impact: Transfer from Office to Divisions workload and responsibility to track rulemaking project activities

and report project status monthly to the LEAO (0.25 PY across the Board).

Central rulemaking files and archives

With the loss of an Office Technician related to the elimination of the Regulatory Affairs Section, maintenance of the central rulemaking files is no longer possible in the Legislative and External Affairs Office.

Impact: The Legal Office will assume responsibility for maintaining the central rulemaking files in accordance with the public access requirements of the Administrative Procedures Act as part of the Office's public records responsibilities (0.25 PY).

Legislative Office

The basic functions of the Board's legislative program will remain unchanged.

Impact: Transfer of 1.0 PY from the legislative affairs program to create the external affairs program will result in a slightly reduced level of effort within some areas, such as the office's ongoing legislative relations efforts. Support to legislative members and staff, outreach to legislators, and the Board's annual legislative tour are areas that may be affected. In addition, meeting the demands of peak legislative periods will require some additional support. This is estimated to be in the range of one to two analysts from April through August (0.83 PY), plus additional clerical support.

VII. FUTURE ACTIVITIES

An agenda item will be prepared for the Committee's consideration in December 1997 to include:

- ✓ Implementation of new procedures issued by control agencies under the authority of Governor's Executive Order W-144-97 and SB 1320 (peer review); and
- ✓ Adoption of the CIWMB Regulatory Overview and 1998 Annual Rulemaking Calendar consistent with the Strategic Plan

VIII. ATTACHMENTS

A. September Regulations Update

IX. APPROVALS

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